

## **REMARKS/ARGUMENTS**

### **Election/Restriction**

The Examiner repeated his acknowledgement of Applicant's election between inventions I and II, and species III and II. Applicant acknowledges the Examiner's determination that the two inventions are patentably distinct and that the two species are patentably distinct.

### **Information Disclosure Statement**

The Examiner indicated that the IDS filed March 24, 2005 fails to comply with 37 CFR 1.98(a)(2), stating that a copy of the entire CA 0818193 patent document must be provided before it can be considered.

Applicant respectfully submits that a copy of CA 0818193 has been submitted, and has been scanned to IFW as a 13 page document under date 03-24-2005. The entirety of the document appears to be legible. The submitted copy reflects the best copy presently available to the Applicant. Applicant submits that the requirements of 37 CFR 1.98(a)(2) have been satisfied, and consideration of the reference is requested.

### **Double Patenting**

The Examiner repeated a provisional double patenting rejection of claims 1-16 in view of Applicant's co-pending Application No. 11/229,839, combined with U.S. Pat. No. 5,280,686 (Davies).

Applicant has filed herewith a terminal disclaimer in compliance with 37 CFR 1.321(c), accordingly.

### **Remarks Regarding Claim Amendments**

Claims 1, 17, and 21 have been amended to recast the preambles as recommended by the Examiner to overcome the s.112 rejections.

**Remarks Regarding s.112 Rejections**

Applicant has amended claims 1, 17, and 21 in accordance with the Examiner's suggestion (see top of page 5 of the Final Action). Applicant submits that the claims comply with the s.112 requirements.

**Remarks Regarding s.102 Rejections**

The Examiner rejected claims 1-16 as anticipated by Davies. The Examiner has interpreted the claimed integrally moulded unitary master frame and integrally moulded unitary sash frame as defining no more than one-piece frame structures, stating that "integrally moulded" is a product-by-process limitation. According to the Examiner, the claim language reads on a frame structure having distinct horizontal and vertical members joined together at their ends (e.g. by corner brackets 17 in Davies) to form an assembled frame.

Applicant submits the Examiner's interpretation of claim 1 contravenes the legal principles by which claims are to be interpreted during examination.

Firstly, the Examiner appears to have taken the position that the words "integrally moulded" can be ignored in interpreting claim 1. Applicant submits the Examiner has no legal authority to do so. Even if "integrally moulded" falls within the scope of a "product-by-process" limitation, such limitations have been well-accepted as capable of construction as structural limitations (see for example, *In re Garnero*, 412 F.2d 276, 279 (62 USPQ 221, 223 (CCPA 1979)). Furthermore, such limitations should especially be considered where the manufacturing process steps would be expected to import distinctive structural characteristics to the final product (MPEP 2113). In the instant case, the "integrally moulded unitary" frames as claimed in claim 1 would have a number of relevant structural distinctions compared to the structure of frames made from horizontal and vertical members cut to length and joined together at their ends. Not the least of these distinctions would be the structure of the corners where the horizontal and vertical members meet.

Furthermore, during examination claims are to be interpreted in a way that is consistent with the specification. The plain language of the claim describes frame structures having vertical and horizontal members that are integral with each other. This is readily understood to mean that the material of one member extends contiguously into the other members, with no seams or joints therebetween. The Examiner's interpretation of claim 1 is inconsistent with this interpretation and with the specification (see, for example, paragraph [0072]).

Lastly, the interpretation of a claim under examination must be consistent with the interpretation that those skilled in the art would reach. Applicant submits that the language "integrally moulded unitary" used to define the frames recited in claim 1 is plain language readily understood by those skilled in the art as defining a frame that does not have distinct horizontal and vertical members joined together at their ends. One skilled in the art would readily reach this conclusion without any need to read additional limitations from the specification into the claims.

In view of the above, Applicant submits that the anticipation rejection of claim 1 in view of Davies ought to be withdrawn. Applicant submits that claim 1 is allowable.

Regarding claims 2-16, Applicant submits that claims 2-16 depend directly or indirectly from claim 1, which is allowable (as argued above), and are therefore allowable in that they depend from an allowable base claim.

Furthermore, regarding claim 2, Applicant notes that Davies fails to disclose an integrally moulded mullion, as argued in greater detail in Applicant's previous Response. Applicant submits that claim 2 is allowable for this additional reason.

Regarding claim 4, the Examiner asserts that element 63 "is clearly capable of supporting a screen and therefore comprises screen support details." Applicant submits that this rejection is improper because there is insufficient evidence on the record to support this conclusion. Davies teaches element 63 as providing

surface 64 for engagement by weatherstripping 62 (col. 4, line 65 – col 5, line 5). There is no teaching or showing how (if at all) element 63 could support a screen in the apparatus of Davis. Applicant notes that in the illustrated embodiment, Davies discloses a door having a fixed door panel 11, and sliding door panel 12. A screen positioned as suggested by the Examiner would presumably be fixed in place, interfering with access through the door. Applicant requests that the Examiner produce authority for his statement.

Regarding claims 7-16, Applicant submits that these claims are allowable for the same reasons as presented in Applicant's previous response (see, for example, pages 16-17 of that response). The Examiner has failed to identify any structure in Davies corresponding to the frame interlacing configuration providing vertical clearance between surfaces of the master frame and sash frame enabling lift-up of the sash frame relative to the master frame for installation and removal, as claimed in claim 7. In fact, Davies expressly states that no such vertical clearance is provided (col. 6, lines 48-65).

Regarding claim 8, the Examiner has identified element 78 as corresponding to the interlacing configuration structure of claim 8. With respect, element 78 of Davies refers to a "separate snap-in element 78" (col. 7, line 1). The snap-in element 78 fails to provide a vertical clearance accommodating lift-up of a sash frame relative to a master frame for installation and removal thereof. There is also no teaching of the relative length of an upper horizontal member of a sash frame compared to the length of an interlacing configuration, as claimed in claim 8.

Regarding claim 9, the Examiner appears to be relying on the hollow interior (where 77 is printed in Fig. 2) of a portion of the top rail 15 as corresponding to the cavity of claim 9. However, the cavity of claim 9 is recited as an element of the sash frame interlacing configuration providing the vertical clearance between the master frame and sash frame. The Examiner is reminded that the claims must be construed in a manner consistent with the specification. An example of a

cavity 205 (also called recess -- see paragraph [0096]) is shown in Fig. 7A, Fig. 8, and Fig. 8A. The cavity has a length that traverses the mullion, extending from the vent side to the fixed side, and so provides the vertical clearance 200 of the interlacing configuration 202 (see, for example, Fig. 5) along a length of the header 116 corresponding to a lift-out position 204 (Fig. 8), a portion of which extends behind the mullion. The cavity of claim 9 cannot possibly be interpreted to read on the enclosed hollow interior of the upper rail of the door frame of Davies, and is not anticipated thereby.

Regarding claim 11, the Examiner identified Davies as disclosing a shoulder defined by the cut 78B shown in Figure 6. Applicant submits that any shoulder in this area would correspond to the cooperating channels and projections that support the sash frame in the master frame (as recited, for example, in claim 2), rather than to an element extending from the upper horizontal member of the master frame and preventing lift-up of the sash frame, as claimed in claim 11.

Regarding claims 12 and 13, the structure of Davies includes no second interlacing configuration, a second vertical clearance, or a second cavity for the same reasons that it fails to disclose a first interlacing configuration, a first vertical clearance, and a first cavity.

Regarding claim 15, the elements 74, 75 do not take up the particularly defined second vertical clearance, and so Davies fails to anticipate claim 15.

Regarding claim 16, the elements 74, 75 in Davies are disclosed as secured within a recess 51 on the underside of the sliding door panel (col. 6, lines 15-17). Davies does not teach or suggest selectably attaching elements 74, 75 to either one of the upper and lower horizontal sash frame members as claimed in claim 16. The Examiner's argument that "when the glider element is attached to the lower horizontal sash frame member it is also attached to the upper horizontal sash frame member via the sash frame member rails" (pages 9-10 of Final Action) betrays a tortuous interpretation of claim 16 that again contravenes the legal principles governing claim construction during examination. The claim

recites selectable attachment of the glider element to either one of the upper and lower horizontal sash frame members, and interpreting the claim language in a way that makes such selectable attachment impossible is improper. Reconsideration and withdrawal of this rejection is requested.

The Examiner rejected claim 17 and 21-23 as anticipated by JP2002-227551 (Tai). As explained in Applicant's previous response, the frames in Tai are constructed from lineals cut to length and joined together at their ends to form rectangular frames. Applicant submits that Tai fails to disclose integrally moulded unitary frames as recited in parts (a) and (b) of each of claim 17 and 21 for the same reasons as those presented with regard to claim 1. Applicant submits that claims 17 and 21 are allowable.

Claims 22 and 23 depend directly or indirectly from claim 21, which is allowable (as argued above). Applicant submits that claims 22 and 23 are therefore allowable in that they depend from an allowable base claim.


Further, regarding claim 23, Applicant submits that Tai fails to disclose an air reservoir substantially separated from a buffering chamber by a cover member having apertures therethrough, as recited in claim 23. Applicant submitted this argument in the previous Response, and notes that the Examiner provided no counter-argument or any indication of how this limitation of claim 23 is taught or suggested in Davies in support of this anticipation rejection. Applicant requests that at the very least, a further office action be used in which claim 23 is properly addressed so that the Applicant can make a complete assessment and respond accordingly.

Beyond that, Applicant submits that this application is now in condition for allowance. Early notice to that effect is respectfully requested.

Respectfully submitted,

**PETTA ET AL.**

By

A handwritten signature in black ink, appearing to read 'James A. Raakman', written over a horizontal line.

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